

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

October 10, 2002

Opinion No. 02-113

Constable fee for delivery of garnishment to bank garnishee

QUESTION

Assume a constable delivers a garnishment in aid of execution to collect a civil judgment to a bank garnishee, and the bank remits money to the clerk's office so that the constable never possesses the money. Is the constable entitled to a commission for collecting money on execution under Tenn. Code Ann. § 8-21-901?

OPINION

Chapter 794 of the Public Acts of 2002 amended Tenn. Code Ann. § 8-21-901 by deleting the statute in its entirety and substituting new language effective July 1, 2002. Under the assumed facts and the amended statute, the constable would be entitled to demand and receive a flat fee of \$20.00.

ANALYSIS

This opinion interprets Tenn. Code Ann. § 8-21-901. As previously written, the statute provided that a sheriff or constable is entitled to demand and receive certain fees where services are actually rendered, including fees for "collecting money on execution." Tenn. Code Ann. § 8-21-901(a)(25) (Supp. 2001). When a sheriff or constable delivered a garnishment in aid of execution to a bank garnishee, and the bank remitted money to the clerk of the court and not the officer, the issue arose whether the officer had rendered the service of "collecting money on execution."

The General Assembly simplified the matter by enacting Chapter 794 of the Public Acts of 2002. Among other things, Chapter 794 amended Tenn. Code Ann. § 8-21-901 by deleting the section in its entirety and substituting new language. The statute provides in relevant part:

(a) Notwithstanding any other provision of law to the contrary, the sheriff or constable is entitled to demand and receive the respective fees for the following services where such services are actually rendered:

* * * *

(2) Collection of money; returning, transporting, storing or establishing possession of property.

* * * *

(B)(1) For collecting money to satisfy a judgment, whether by execution, fieri facias, garnishment or other process, in civil cases *each time collection is attempted*. \$20.00

2002 Tenn. Pub. Acts ch. 794, § 1 (emphasis added). Chapter 794 became effective on July 1, 2002. *Id.* at § 3.

Under the statute as amended, a sheriff or constable is entitled to demand and receive a fee of \$20.00 each time the officer attempts to collect money by garnishment in order to satisfy a civil judgment. Thus, if a constable delivers a garnishment in aid of execution to a bank garnishee, and the bank remits money to the clerk of the court, as opposed to the officer, the constable is entitled to demand and receive a fee of \$20.00. Tenn. Code Ann. § 8-21-105 provides a mechanism for resolving fee questions in the context of the case in which the fees must be paid. The statute states: “It is the duty of the courts to decide, upon application by the officer entitled to compensation, any question arising under the law, and such decision will protect the officer acting under it.”

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

GINA J. BARHAM
Deputy Attorney General

Requested by:

Cornelia A. Clark
Director, Administrative Office of the Courts
Nashville City Center, Suite 600, 511 Union Street
Nashville, TN 37219